

The opinion in support of the decision being entered today was not written  
for publication and is not binding precedent of the Board.

Paper No. 14

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

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Ex parte JENS HERMAN JENSEN

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Appeal No. 2003-0677  
Application No. 09/759,950

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ON BRIEF

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Before ABRAMS, McQUADE, and NASE, Administrative Patent Judges.  
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 and 3  
to 9, which are all of the claims pending in this application.

We AFFIRM.

### BACKGROUND

The appellant's invention relates to a loading platform system for mounting on a vehicle, particularly on a truck, comprising a platform lifting structure, an essentially plate-like loading platform for lifting and lowering loads and at least one lifting actuator mechanism for lifting and lowering the loading platform (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Randall et al. (Randall)	3,257,011	June 21, 1966
Mortenson	4,078,676	Mar. 14, 1978

Claims 1 and 3 to 9 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the appellant regards as the invention.

Claims 1 and 3 to 9 stand rejected under 35 U.S.C. § 103 as being unpatentable over Randall in view of Mortenson.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the final rejection (Paper No. 5, mailed March 10, 2002) and the answer (Paper No. 10, mailed October 9, 2002) for the examiner's complete reasoning in support of the rejections, and to the brief (Paper No. 9, filed September 12, 2002) for the appellant's arguments thereagainst.

#### OPINION

Initially, we must determine if the rejection of claims 1 and 3 to 9 under 35 U.S.C. § 112, second paragraph, made in the final rejection is before us in this appeal. The facts are as follows:

1. The final rejection included a rejection of claims 1 and 3 to 9 under 35 U.S.C. § 112, second paragraph.
2. Following the final rejection, the appellant submitted a response under 37 CFR § 1.116 (Paper No. 6, filed July 10, 2002) in which the appellant proposed amendments to overcome the rejection under 35 U.S.C. § 112, second paragraph, and also to distinguish over the applied prior art.
3. In the Advisory Action (Paper No. 7, mailed July 25, 2002) responding to Paper No. 6, the examiner informed the appellant that the proposed amendments would not

be entered, however, the examiner also indicated that the response had overcome the rejection under 35 U.S.C. § 112, second paragraph.

4. In the brief, the appellant noted that the rejection under 35 U.S.C. § 112, second paragraph, had be overcome, and that the sole issue under appeal was the rejection of claims 1 and 3 to 9 under 35 U.S.C. § 103.

5. In the answer, the examiner stated that the appellant's statement of the issues in the brief was correct. Nevertheless, the examiner thereafter stated that one of the rejections applicable to the appealed claims was a rejection of claims 1 and 3 to 9 under 35 U.S.C. § 112, second paragraph, and that the appellant had not contested this rejection but that the proposed and unentered amendment after final would overcome this rejection.

6. In the response to the answer (Paper No. 11, filed November 23, 2002), the appellant noted that it had been assumed that the rejection under 35 U.S.C. § 112, second paragraph, had been resolved per the Advisory Action and that this response is submitted for clarification of the examiner's continued rejection of claims 1 and 3 to 9 under 35 U.S.C. § 112, second paragraph.

7. The examiner did not respond to this request for clarification. Instead, the examiner treated Paper No. 11 as a reply brief (see Paper No. 12, mailed December 12, 2002) and stated that the reply brief had been entered and that the application has

been forwarded to the Board of Patent Appeals and Interferences for decision on the appeal.

Since the rejection of claims 1 and 3 to 9 under 35 U.S.C. § 112, second paragraph, was set forth in both the final rejection and the answer, it is our view that rejection under 35 U.S.C. § 112, second paragraph, is properly before us in this appeal.

Since the appellant has not specifically contested the rejection under 35 U.S.C. § 112, second paragraph, we summarily sustain the rejection of claims 1 and 3 to 9 under 35 U.S.C. § 112, second paragraph. However, in the interest of justice we include herewith an explicit statement under 37 CFR § 1.196(c)<sup>1</sup> that the proposed amendments to claims 1 and 3 set forth in the response under 37 CFR § 1.116 (Paper No. 6, filed July 10, 2002) may be allowed if submitted in amended form omitting the word "single" in claim 1.

We now turn to the rejection of claims 1 and 3 to 9 under 35 U.S.C. § 103.

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<sup>1</sup> 37 CFR § 1.196(c) provides:

Should the decision of the Board of Patent Appeals and Interferences include an explicit statement that a claim may be allowed in amended form, appellant shall have the right to amend in conformity with such statement which shall be binding upon the examiner in the absence of new references or grounds of rejection.

The claims under appeal are drawn to a loading platform system for mounting on a vehicle having a loading bed. The system comprises, inter alia, (1) a loading platform; (2) a lift support structure with a lift actuator for raising and lowering the loading platform between lower and upper end positions; (3) a tilt structure with a tilt actuator for pivoting the loading platform from a horizontal to a vertical position and vice versa; and (4) a releasable locking means for locking the loading platform in its upper end position level with, and directly to, the loading bed, and also for releasably locking the loading platform in the vertical position.

Randall's invention relates to loading apparatus and particularly to an improved power operated loader adapted to be mounted on a truck or other platform to be loaded. As shown in the drawings, a load supporting platform 34 is actuated by a power cylinder 60 controlled by a manually actuated lever 90 so as to move between lower and upper end positions. As shown in Figures 1 and 3, a rotary collar 41 is provided with a manually actuated latch means indicated generally at 70 which includes a manually actuated latch lever 72 having an inner end pivotally mounted on beam member 22 at a pivot 74. Lever 72 includes a first latch portion in the form of a recess 76 and a second latch portion 78 mounted on rotary collar 41 so as to enter recess 76 when lift platform 34 is manually pivoted to the closed tailgate position illustrated in Figure 5. Also, in the position of Figure 5 the platform 34 is

supported by an angle bracket 81 mounted on the gear edge of truck platform 80. A recess 83 forms a downwardly facing surface that rests on the bracket 81. Latch lever 72 is constantly urged upwardly towards the latched position by a tension spring 82 connected between a hole 84 in the lever and a hole 86 in the end of a bracket 88 the latter being attached to frame mounting brackets 23. As shown in Figure 4, an angle bracket 150 is mounted on the edge of truck platform 80 and a corresponding recess 152 is formed on lift platform 34.

In operation of Randall's loading apparatus, platform 34 is manually moved from the tailgate forming position of Figure 5 to the platform level position of Figure 4 but the latch mechanism of Figure 3 must first be released by depressing foot lever 70. Upon actuation of the control lever 90 towards the rear of the apparatus, or to the left in Figure 3, power cylinder 60 will drain permitting platform 34 to drop downwardly to the ground level or loading position. In order to lift a load placed on lift platform 34 from the ground level or loading position of Figure 6, an electric motor is energized by actuating the control lever 90 forwardly, or to the right as seen in Figure 3, which connects the power cylinder 60 with the outlet of a pump 170 to raise the lift platform 34. When control lever 90 is actuated towards the rear of the apparatus, to a centered position, pressurized fluid is trapped in the power cylinder 60 and thus the load supporting platform 34 can be arrested at the bed level or unloading position of Figure 4 or at any

other desired position. After loading operations are completed, platform 34 is manually pivoted from the horizontal position of Figure 4 to the vertical tailgate position of Figure 5 and the manual effort required is greatly reduced by the helper springs 102.

Mortenson's invention is especially designed to provide a lift gate in which the linkage is so arranged as to lie in underlying supporting relationship to the platform when the platform is in its stored position to fully support the platform assembly and to minimize rattling and the accompanying jarring road shock impacts on the lift linkage. As shown in Figure 1, the rear of the load carrying bed B of a truck T has a fixed rearward extension plate 46 attached thereto to partially shield the lift gate linkage when in its stored position and to serve as a mounting member for a latching mechanism and as an aligning member cooperable with load supporting platform 28 when in its raised position. As best seen in Figures 2 and 3, load supporting platform 28 has a pair of fixedly mounted forwardly projecting pins 48 located at the front edge of the platform adjacent each side of the platform. A downwardly turned flange 50 at the rearward edge of extension plate 46 is formed with elongate slots 52 into which pins 48 project when the platform 28 is at its elevated position, shown in broken line in Figure 3. When received within slots 52, pins 48 function to prevent further upward movement of platform 28, thereby establishing its upper limit of movement, while at the same time

the pins prevent any transverse sway of platform 28 (left to right as viewed in Figure 2) relative to the stationary extension plate 46.

To latch the linkage and platform of Mortenson in their stored position, a latch assembly best shown in Figures 2 and 3 is mounted on the underside of extension plate 46. The latch assembly includes a latch member 74 having an opening 76 therein to receive pin 48 when the linkage and platform are moved to their stored position. To release the pin 48 from opening 76, a rotary shaft 78 is journaled in frame members 54 and 56 of extension plate 46 and a latch actuator arm 80 is fixedly secured to shaft 78. Handles 82 are provided at the opposite ends of shaft 78 for manually rotating shaft 78 from either side of the device. With reference to Figure 3, it is seen that if handle 82 is manipulated to rotate shaft 78 in a clockwise direction, arm 80 will press downwardly on the right hand end of latch member 74, thus causing latch member 74 to rotate in a clockwise direction against the action of torsion spring 68. This clockwise rotation of latch member 74 swings the left hand end of the latch member outwardly beyond the outer end of pin 48, thus releasing the latched relationship.

The overall operation of Mortenson's lift gate is as follows. Referring first to Figure 1, the assembly is shown in its normal operating position with platform 28 disposed in a horizontal position resting upon the ground. A load to be placed in the

truck bed is then placed upon platform 28 and hydraulic motors 42 of the assembly are actuated to causing the linkage to rotate upwardly from the position shown in Figure 1 until the forward edge of platform 28 is in abutting relationship with the rearward edge of extension plate 46, as shown in broken line in Figure 3. The load is then transferred from platform 28 into the interior of the truck bed. When the platform 28 moves into abutting relationship with the rearward edge of extension plate 46, the pins 48 on the platform are received within the slots 52 in plate 46 to prevent further upward movement of the platform and to prevent the platform against transverse sway relative to the extension plate. By reversing the foregoing procedure, a load can be lowered from the truck bed to ground level.

To place Mortenson's assembly in its stored position, the apparatus is first put in the position shown in Figure 1, see also Figure 4. Extension plate 28a is manually folded to the broken line position of Figure 3 and rearward edge of platform 28 is then manually grasped and elevated to the position shown in Figure 5. With parts in the position shown in Figure 5, to place the device in its stored position, motors 42 are actuated to collapse or fold platform 28. In Figure 6, the device is shown as it is approaching its stored position. Further extension of motor 42 will drive the assembly into its stored position with pin 48 seated in latch member 74 as shown in Figures 3 and 7.

After the scope and content of the prior art are determined, the differences between the prior art and the claims at issue are to be ascertained. Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966).

Based on our analysis and review of Randall and claim 1, it is our opinion that the only differences are (1) a tilt structure with a tilt actuator for pivoting the loading platform from a horizontal to a vertical position and vice versa and (2) a releasable locking means for locking the loading platform in its upper end position level with, and directly to the loading bed, and also for releasably locking the loading platform in the vertical position.

In our view, the teachings of the applied prior art<sup>2</sup> would not have made it obvious at the time the invention was made to a person of ordinary skill in the art to have modified Randall's loading apparatus to arrive at the claimed subject matter. In that regard, neither Randall's load supporting platform 34 or Mortenson's load supporting platform 28 locks (i.e. secures from movement) the load supporting platform in its upper end position level with, and directly to the loading bed as claimed since each load supporting platform in its upper end position level with the loading bed is free

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<sup>2</sup> The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. See In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

(i.e., not secured or locked) to move down. That is, Randall's cooperating angle bracket 150 and recess 152 and Mortenson's pins 48 and slots 52 do not in any way prevent Randall's load supporting platform 34 or Mortenson's load supporting platform 28 from being lowered from their upper end position level with the loading bed. As such, the claimed subject matter is not suggested by the teachings of the applied prior art.

For the reasons set forth above, the decision of the examiner to reject claims 1 and 3 to 9 under 35 U.S.C. § 103 is reversed.

#### CONCLUSION

To summarize, the decision of the examiner to reject claims 1 and 3 to 9 under 35 U.S.C. § 112, second paragraph, is affirmed and the decision of the examiner to reject claims 1 and 3 to 9 under 35 U.S.C. § 103 is reversed.

A statement pursuant to 37 CFR § 1.196(c) has been made in this decision. A time period in which the appellant may file an amendment for the purpose stated in § 1.196(c) is hereby set to expire TWO MONTHS FROM THE DATE OF THIS DECISION.

No time period for taking any subsequent action in connection with this appeal  
may be extended under 37 CFR § 1.136(a).

AFFIRMED; 37 CFR § 1.196(c)

NEAL E. ABRAMS  
Administrative Patent Judge

JOHN P. McQUADE  
Administrative Patent Judge

JEFFREY V. NASE  
Administrative Patent Judge

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KLAUS J. BACH  
4407 TWIN OAKS DRIVE  
MURRYSVILLE, PA 15668

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